

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5934 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

FRANCES W. BAXTER (Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-199

S.S.A. No.

FORMERLY BENEFIT DECISION No. 5934
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THE PACIFIC TELEPHONE AND
TELEGRAPH CO. (Appellant-Employer)

The above-named employer on February 20, 1952, appealed to a Referee (S-29469) from a determination of the Department of Employment which held that the claimant met the availability requirements of Section 57(c) of the Unemployment Insurance Act (now section 1253(c) of the Unemployment Insurance Code). On June 20, 1952, the California Unemployment Insurance Appeals Board set aside the decision of the Referee and removed the matter to itself under Section 72 of the Unemployment Insurance Act (now section 1336 of the Unemployment Insurance Code). The appellant has filed a brief in this matter to which the claimant, although afforded an opportunity to do so, has not replied.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was employed by the appellant as a telephone operator and assistant dial clerk from July 13, 1942, to December 15, 1951, when she left her

employment under circumstances hereinafter set forth. The claimant has had no other employment experience.

On December 23, 1951, the claimant registered for work and filed a claim for benefits in the Honolulu office of the Territory of Hawaii, Bureau of Employment Security. The appellant questioned the claimant's eligibility for benefits under Section 57(c) of the Act so that on February 13, 1952, the Department issued a determination which held that the claimant met the availability requirements of section 57(c) of the Act.

In December, 1951, the claimant obtained a 30 days' leave of absence from the appellant in order to travel to Hawaii to be married. On December 21, 1951, the claimant wrote a letter to the appellant explaining that she would be unable to return upon the expiration of her leave of absence because her intended husband, a member of the United States Navy, wanted her to remain with him in Hawaii until he received orders for overseas duty. The claimant was married on December 28, 1951, and decided to remain with her husband until his transfer.

The claimant resided in Honolulu, population 230,485, during the period involved herein. The Territory of Hawaii has a law which prohibits public utilities from employing any individuals on other than a relief basis who have not established three-years residence in the island. The claimant has contacted the principal hotels in Honolulu in her search for PBX work. She was permitted to file applications for work but was told that no openings existed and that they preferred to hire "islanders." In addition the claimant applied for work in Honolulu with the telephone company, a department store, a gas company, an electric company, two banks, the pineapple companies, PBX Civil Service at the Marine Base, and as a receptionist in Waikiki. In some instances the prospective employer advised the claimant that no openings existed while in others she was told that she lacked sufficient experience to qualify for any work they had to offer. The claimant made numerous telephone calls to employers and in one instance responded to an advertisement in a local newspaper for PBX work. According to the evidence, work of the kind in which she has had experience and for which she has applied is being performed in the geographical area in which she has offered her services.

In its brief filed in this matter, the appellant requests that the question of the claimant's potential disqualification under Section 58(a)(1) of the Act (now section 1256 of the Unemployment Insurance Code) be considered. In this respect the evidence discloses that on January 25, 1952, the Department issued a determination which held that the claimant was not subject to disqualification under Section 58(a)(1) of the Act because she left her work with the appellant with good cause. A copy of this determination was mailed to and received by the appellant, but no appeal was filed by the appellant and the issue was not raised until the Referee's hearing on April 28, 1952. The Referee refused to consider the issue on the ground that the appellant had submitted no reasons which would constitute good cause for its failure to file a timely appeal from the Department's determination.

REASON FOR DECISION

In our opinion the Referee acted properly in refusing to consider the merits of the determination issued by the Department on January 25, 1952, which held that the claimant left her work with good cause. We considered an identical situation in Benefit Decision No. 5463 and stated as follows:

"Here a determination had been issued by the Department which treated the issue of voluntarily leaving and no appeal had been taken from that determination so that it had become final; hence the employer had lost his right to appeal such issue. The employer has made no showing which constituted good cause for failure to file a timely appeal. Therefore, the Referee was without jurisdiction to receive evidence on the issue which was finally determined as to both the employer-appellant and the claimant. Although evidence was received by the Referee on this issue, it was surplusage and the Referee acted properly in not treating it in his decision."

For reasons set forth above, we are unable to accede to the appellant's request that we consider the merits of the Department's determination which held that the claimant voluntarily left her work with the appellant with good cause.

Section 57 of the Unemployment Insurance Act (now section 1253(c) of the Unemployment Insurance Code) provides in part that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

"(c) He was able to work and available for work for such week."

In Benefit Decision No. 5079 we set forth the following principles to be applied in so-called removal situations:

"This Appeals Board has consistently adhered to the principle that a claimant who voluntarily and for personal reasons leaves employment in an area where there is work and moves to a locality where opportunities for employment in his usual occupation do not exist, and where there is little or no opportunity to obtain other employment for which he is reasonably fitted, has withdrawn from the labor market and is not available for work within the meaning of Section 57(c) of the Act. (See Benefit Decision Nos. 3967-6976, 3999-7205, and others.) However, the removal from one locality to another area does not of itself render a claimant ineligible for benefits under the Act. The right to receive benefits is not dependent upon permanency in one locality, for, if such were the case, the mobility of the labor supply would be seriously impeded. It is only when a claimant moves to a new locality where there is no labor market for his services, or where there is a labor market but he refuses to adjust his demands to the prevailing employment conditions in the new locality that the question of availability becomes an issue. This Appeals Board has held in many prior decisions that the test to be applied in determining whether there is a labor market for a claimant in a particular locality is whether there is a reasonable potential employment field. The fact that there are no openings is immaterial in determining availability for work and unemployment under such circumstances would be involuntary and properly compensable by unemployment insurance benefits."

In Benefit Decision No. 5641, we held that a claimant who was unable to obtain employment in his usual occupation because of a rule imposed by employers in the area barring the employment of persons of the claimant's advanced years, and whose age also constituted a barrier to his obtaining any other employment opportunities were extremely limited.

In Benefit Decision No. 5715 involving a claimant who was in her seventh month of pregnancy but who was able to work and imposed no restrictions on suitable work, we held that the claimant was available for work despite the fact that employers in the area did not hire women who were noticeably pregnant, and the Department did not refer such individuals as a matter of policy.

We believe the above-cited decisions are decisive of the issue involved in the instant case. Although the public utilities in the area in which the claimant was offering her services are prohibited by law from employing the claimant except on a relief basis, and some of the other potential employers in the area preferred to hire permanent residents, the claimant imposed no restrictions on acceptable work, and work for which the claimant is qualified by prior experience and for which she has applied is being performed in the geographical area in which she has offered her services. Under the circumstances, we conclude that there was a potential labor market for the claimant and she therefore met the availability requirements of Section 57(c) of the Act.

DECISION

The determination of the Department is affirmed. Benefits are payable provided the claimant is otherwise eligible.

Sacramento, California, January 29, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

DISSENTING OPINION

I dissent.

I believe the instant case is more remarkable for its ancient history than for any precedential value. Mainly, it bases its conclusion on Benefit Decision No. 5641 (which is now Appeals Board Decision No. P-B-196) and Benefit Decision No. 5715 (which is now Appeals Board Decision No. P-B-197), but does not appear to add anything to what was said in those cases.

Moreover, once again there is a serious question whether the 1952 Board had jurisdiction to consider this matter. This is another case which the Board removed to itself pursuant to section 1336 of the Unemployment Insurance Code. Contrary to the assertion on the face of the decision, there is no longer any record available for our review. Consequently, we are unable to ascertain whether the Board's removal of this matter to itself was timely within the meaning of Isobe v. California Unemployment Insurance Appeals Board (11 Cal 3d 313). The court in Isobe ruled that the ten-day limitation within which an appeal could be taken to this Board from a Referee's decision (prior to the January 1, 1976 statutory change) is also the jurisdictional time limit within which the Board could remove a case to itself pursuant to section 1336.

If we apply the presumption that each government action preceding the Board's "take-over" was performed in accordance with the law, it then appears that the Board's removal may have been in excess of the time limit established in Isobe. The employer here filed its appeal on February 20, 1952. The Referee's hearing was held on April 28, 1952. We are not told when the Referee's decision issued, but the Board's "take-over" did not occur until June 20, 1952. It seems doubtful that the Referee would require more than 30 days at the maximum to issue a decision, which would put the Board's action beyond the jurisdictional limit.

Additionally, the decision makes note of the "home-rule" prohibition which existed in 1951 when Hawaii was still a United States Territory. At that time, certain

jobs were only available to persons who had established residence in the Territory for a specified duration. With the subsequent advent of statehood, such restrictions gave way to the "privileges and immunities" clause of the United States Constitution (Article IV, Section 2), which applies to each State, but does not bind Territories. Again, this shows the lack of relevance of this case to the present day.

HARRY K. GRAFE